

CHAPTER 1014**DEPARTMENT OF HUMAN SERVICES
HEALTH CARE ASSISTANCE PROGRAMS — ELIGIBILITY***S.F. 249*

AN ACT relating to the conference of eligibility on and conditions of eligibility for individuals for certain programs under the purview of the department of human services.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 249A.3, subsection 2, paragraph a, Code Supplement 2007, is amended to read as follows:

a. As allowed under 42 U.S.C. § 1396a(a)(10)(A)(ii)(XIII), individuals with disabilities, who are less than sixty-five years of age, who are members of families whose income is less than two hundred fifty percent of the most recently revised official poverty guidelines published by the United States department of health and human services for the family, who have earned income and who are eligible for medical assistance or additional medical assistance under this section if earnings are disregarded. As allowed by 42 U.S.C. § 1396a(r)(2), unearned income shall also be disregarded in determining whether an individual is eligible for assistance under this paragraph. For the purposes of determining the amount of an individual's resources under this paragraph and as allowed by 42 U.S.C. § 1396a(r)(2), a maximum of ten thousand dollars of available resources shall be disregarded, and any additional resources held in a retirement account, in a medical savings account, or in any other account approved under rules adopted by the department shall also be disregarded. Individuals eligible for assistance under this paragraph, whose individual income exceeds one hundred fifty percent of the official poverty guidelines published by the United States department of health and human services for an individual, shall pay a premium. The amount of the premium shall be based on a sliding fee schedule adopted by rule of the department and shall be based on a percentage of the individual's income. The maximum premium payable by an individual whose income exceeds one hundred fifty percent of the official poverty guidelines shall be commensurate with the cost of state employees' group health insurance in this state. The payment to and acceptance by an automated case management system or the department of the premium required under this paragraph shall not automatically confer initial or continuing program eligibility on an individual. A premium paid to and accepted by the department's premium payment process that is subsequently determined to be untimely or to have been paid on behalf of an individual ineligible for the program shall be refunded to the remitter in accordance with rules adopted by the department.

Sec. 2. Section 249A.6, Code 2007, is amended to read as follows:

249A.6 **ASSIGNMENT — LIEN.**

1. a. As a condition of eligibility for medical assistance, a recipient who has the legal capacity to execute an assignment shall do all of the following:

- (1) Assign to the department any rights to payments of medical care from any third party.
- (2) Cooperate with the department in obtaining payments described in paragraph "a".
- (3) Cooperate with the department in identifying and providing information to assist the department in pursuing any third party who may be liable to pay for medical care and services available under the medical assistance program.

b. Any amount collected by the department through an assignment shall be retained by the department as reimbursement for medical assistance payments.

c. An assignment under this subsection is in addition to an assignment of medical support payments under any other law, including section 252E.11.

1. 2. When payment is made by the department for medical care or expenses through the medical assistance program on behalf of a recipient, the department shall have a lien, to the

extent of those payments, upon all monetary claims which the recipient may have against third parties. A lien under this section is not effective unless the department files a notice of lien with the clerk of the district court in the county where the recipient resides and with the recipient's attorney when the recipient's eligibility for medical assistance is established. The notice of lien shall be filed before the third party has concluded a final settlement with the recipient, the recipient's attorney, or other representative. The third party shall obtain a written determination from the department concerning the amount of the lien before a settlement is deemed final for purposes of this section. A compromise, including but not limited to a settlement, waiver or release, of a claim under this section does not defeat the department's lien except pursuant to the written agreement of the director or the director's designee. A settlement, award, or judgment structured in any manner not to include medical expenses or an action brought by a recipient or on behalf of a recipient which fails to state a claim for recovery of medical expenses does not defeat the department's lien if there is any recovery on the recipient's claim.

~~2.~~ 3. The department shall be given notice of monetary claims against third parties as follows:

a. Applicants for medical assistance shall notify the department of any possible claims against third parties upon submitting the application. Recipients of medical assistance shall notify the department of any possible claims when those claims arise.

b. A person who provides health care services to a person receiving assistance through the medical assistance program shall notify the department whenever the person has reason to believe that third parties may be liable for payment of the costs of those health care services.

c. An attorney representing an applicant for or recipient of assistance on a claim upon which the department has a lien under this section shall notify the department of the claim of which the attorney has actual knowledge, prior to filing a claim, commencing an action or negotiating a settlement offer. Actual knowledge under this section shall include the notice to the attorney pursuant to subsection ~~1~~ 2.

The mailing and deposit in a United States post office or public mailing box of the notice, addressed to the department at its state or district office location, is adequate legal notice of the claim.

~~3.~~ 4. The department's lien is valid and binding on an attorney, insurer, or other third party only upon notice by the department or unless the attorney, insurer, or third party has actual notice that the recipient is receiving medical assistance from the department and only to the extent to which the attorney, insurer, or third party has not made payment to the recipient or an assignee of the recipient prior to the notice. Payment of benefits by an insurer or third party pursuant to the rights of the lienholder in this section discharges the attorney, insurer, or third party from liability to the recipient or the recipient's assignee to the extent of the payment to the department.

~~4.~~ 5. If a recipient of assistance through the medical assistance program incurs the obligation to pay attorney fees and court costs for the purpose of enforcing a monetary claim upon which the department has a lien under this section, upon the receipt of the judgment or settlement of the total claim, of which the lien for medical assistance payments is a part, the court costs and reasonable attorney fees shall first be deducted from this total judgment or settlement. One-third of the remaining balance shall then be deducted and paid to the recipient. From the remaining balance, the lien of the department shall be paid. Any amount remaining shall be paid to the recipient. An attorney acting on behalf of a recipient of medical assistance for the purpose of enforcing a claim upon which the department has a lien shall not collect from the recipient any amount as attorney fees which is in excess of the amount which the attorney customarily would collect on claims not subject to this section.

~~5.~~ 6. For purposes of this section the term "third party" includes an attorney, individual, institution, corporation, or public or private agency which is or may be liable to pay part or all of the medical costs incurred as a result of injury, disease, or disability by or on behalf of an applicant for or recipient of assistance under the medical assistance program.

~~6.~~ 7. The department may enforce its lien by a civil action against any liable third party.

Sec. 3. Section 249J.8, subsection 1, Code Supplement 2007, is amended to read as follows:

1. Each expansion population member whose family income exceeds one hundred percent of the federal poverty level as defined by the most recently revised poverty income guidelines published by the United States department of health and human services shall pay a monthly premium not to exceed one-twelfth of five percent of the member's annual family income. Each expansion population member whose family income is equal to or less than one hundred percent of the federal poverty level as defined by the most recently revised poverty income guidelines published by the United States department of health and human services shall not be subject to payment of a monthly premium. All premiums shall be paid on the last day of the month of coverage. The department shall deduct the amount of any monthly premiums paid by an expansion population member for benefits under the healthy and well kids in Iowa program when computing the amount of monthly premiums owed under this subsection. An expansion population member shall pay the monthly premium during the entire period of the member's enrollment. Regardless of the length of enrollment, the member is subject to payment of the premium for a minimum of four consecutive months. However, an expansion population member who complies with the requirement of payment of the premium for a minimum of four consecutive months during a consecutive twelve-month period of enrollment shall be deemed to have complied with this requirement for the subsequent consecutive twelve-month period of enrollment and shall only be subject to payment of the monthly premium on a month-by-month basis. Timely payment of premiums, including any arrearages accrued from prior enrollment, is a condition of receiving any expansion population services. The payment to and acceptance by an automated case management system or the department of the premium required under this subsection shall not automatically confer initial or continuing program eligibility on an individual. A premium paid to and accepted by the department's premium payment process that is subsequently determined to be untimely or to have been paid on behalf of an individual ineligible for the program shall be refunded to the remitter in accordance with rules adopted by the department. Premiums collected under this subsection shall be deposited in the premiums subaccount of the account for health care transformation created pursuant to section 249J.23. An expansion population member shall also pay the same copayments required of other adult recipients of medical assistance.

Sec. 4. Section 514I.10, Code 2007, is amended by adding the following new subsection:

NEW SUBSECTION. 3. The payment to and acceptance by an automated case management system or the department of the premium required under this section shall not automatically confer initial or continuing program eligibility on an individual. A premium paid to and accepted through the department's premium payment process that is subsequently determined to be untimely or to have been paid on behalf of an individual ineligible for the program shall be refunded to the remitter in accordance with rules adopted by the department.

Approved March 25, 2008

CHAPTER 1015**BUSINESS CORPORATIONS —
DISTRIBUTIONS AND BUSINESS OPPORTUNITIES***H.F. 2165*

AN ACT relating to business corporations, by providing for distributions and business opportunities.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 490.640, subsection 7, Code 2007, is amended to read as follows:

7. Indebtedness of a corporation, including indebtedness issued as a distribution, is not considered a liability for purposes of determinations under subsection 1 if its terms provide that payment of principal and interest are made only if and to the extent that payment of a distribution to shareholders could then be made under this section. If the indebtedness is issued as a distribution, each payment of principal or interest is treated as a distribution, the effect of which is measured on the date the payment is actually made.

8. This section shall not apply to distributions in liquidation under division XIV.

Sec. 2. Section 490.831, subsection 1, paragraph a, Code 2007, is amended to read as follows:

a. That any of the following apply:

(1) A provision in the articles of incorporation authorized by section 490.202, subsection 2, paragraph “d”, or the protection afforded by section 490.832 if interposed as a bar to the proceeding by the director, does not preclude liability.

(2) The protection afforded by section 490.870 precludes¹ liability.

Sec. 3. NEW SECTION. 490.870 BUSINESS OPPORTUNITIES.

1. A director’s taking advantage, directly or indirectly, of a business opportunity may not be the subject of equitable relief, or give rise to an award of damages or other sanctions against the director, in a proceeding by or in the right of the corporation on the ground that such opportunity should have first been offered to the corporation, if before becoming legally obligated respecting the opportunity the director brings it to the attention of the corporation and any of the following apply:

a. Action by qualified directors disclaiming the corporation’s interest in the opportunity is taken in compliance with the procedures set forth in section 490.832, as if the decision being made concerned a director’s conflicting interest transaction.

b. Shareholders’ action disclaiming the corporation’s interest in the opportunity is taken in compliance with the procedure set forth in section 490.832, as if the decision being made concerned a director’s conflicting interest transaction; except that, rather than making the disclosure as required in section 490.832, in each case the director shall have made prior disclosure to those acting on behalf of the corporation of all material facts concerning the business opportunity that are then known to the director.

2. In any proceeding seeking equitable relief or other remedy based upon an alleged improper taking advantage of a business opportunity by a director, the fact that the director did not employ the procedure described in subsection 1 before taking advantage of the opportunity shall not create an inference that the opportunity should have been first presented to the corporation or alter the burden of proof otherwise applicable to establish that the director breached a duty to the corporation in the circumstances.

Approved March 25, 2008

¹ According to enrolled Act; the phrase “does not preclude” probably intended